

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

Case #: 16-042043-FH

CofA#: 335906

SCt#: 158296

v

TERRANCE ANTHONY FURLINE,

Defendant-Appellee.

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**DEFENDANT-APPELLANT'S ANSWER TO
PROSECUTION'S APPLICATION FOR LEAVE TO APPEAL**

PROOF OF SERVICE

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STATEMENT OF JURISDICTION

The Michigan Supreme Court has jurisdiction pursuant to MCR 7.303(B)(1) concerning an appeal after a decision by the Michigan Court of Appeals. Defendant-Appellant Terrance Anthony Furline was found guilty after a jury trial concluding on September 20, 2016 of the offenses of conducting a criminal enterprise; third-degree arson; conspiracy to commit third-degree arson; first-degree retail fraud; and conspiracy to commit first-degree retail fraud. (“Judgment Of Sentence Commitment To Department Of Corrections,” 11/4/16.) On November 3, 2016, Mr. Furline was sentenced as a fourth habitual offender to incarceration within the Michigan Department of Corrections for a term of 320 months to 50 years. (Id.)

An appeal to the Michigan Court of Appeals resulted in the Court of Appeals vacating the convictions and sentences and remanding for a new trial. (Court of Appeals’ Opinion, 7/3/18.) The prosecution now files for leave to appeal pursuant to MCR 7.303(B)(1). (“Plaintiff-Appellant’s Application For Leave To Appeal,” 8/22/18.)

COUNTER-STATEMENT OF QUESTION PRESENTED

I. The court must sever the trial of defendants on related offenses on a showing that severance is necessary to avoid prejudice to substantial rights of the defendant. Was Mr. Furline denied a fair trial by the trial court's denial of a motion for separate trials when there was a showing of prejudice and when one jury determined the fate of the defendants with antagonistic and irreconcilable theories?

Plaintiff-Appellant says "no."

Defendant-Appellee says "yes."

The trial court says "no."

The Michigan Court of Appeals says "yes"

COUNTER-STATEMENT OF FACTS

Defendant-Appellee Terrance Anthony Furline was charged with conducting a criminal enterprise; third-degree arson; conspiracy to commit third-degree arson; first-degree retail fraud; and conspiracy to commit first-degree retail fraud. (“Complaint-Felony,” 11/4/15.) Mr. Furline was alleged to have committed the offenses with two others-- Alvin Bernard Jenkins and Doris Furline-Walker. (Transcript, “Preliminary Examination-- Volume 1,” 1/12/16.) Doris Furline-Walker was never charged, but played a significant role in the trial as she stated the offenses were the design of Jenkins and Mr. Furline knew nothing about Jenkins’ scheme.

Preliminary Examination

The evidence adduced during the preliminary examination showed thefts of property from two Home Depots-- one in Genesee County and one in Saginaw County. (*Id.*) The only evidence of Mr. Furline doing anything was alerting an employer at the Saginaw Home Depot, saying: “Sir, you got a fire.” (*Id.*, p 22.)

The alleged criminal enterprise was purported to be a fire and theft in a Genesee County (Flint) Home Depot as well as a fire in the Saginaw Home Depot. (*Id.*, pp 40-44.) There was no theft from the store in Saginaw although it was alleged that Jenkins was about to commit a retail fraud but

was prevented by a store employee. (Id., p 44; “Preliminary Examination-- Volume 2,” pp 5-61/12/16.)

It was determined that the fire in Saginaw had started by an open flame. (Transcript, “Preliminary Examination-- Volume 1,” p 69, 1/12/16.) Doris Furline-Walker, the mother of Mr. Furline and boyfriend of Co-Defendant Jenkins, testified as being involved in the Flint offense. (Id., pp 74-75.) She said at the Flint Home Depot, she was with Jenkins when a fire was set and items were stolen from the store; that Mr. Furline had been with the couple; but that **she did not know if he was playing an active role in the Flint incident as he did not set the fire and he did not remove the merchandise.** (Id., pp 78-80, 90-92, 97-99.) The plan, according to Ms. Furline-Walker, was that Jenkins was to set a fire, and she was to take the items out the store. (Id., pp 79-80.) She said there may have been two or three times where she returned items for Jenkins. (Id., pp 81-82.)

Jenkins mentioned to Ms. Furline-Walker that he was going to do the same thing in Saginaw-- start a fire and steal-- and her communication with him after the Saginaw incident is that Jenkins did set the fire, but it got out of control. (Id., pp 83 and 100-02.) However, Ms. Furline-Walker said she did not go to Saginaw, but her son did. (Id., pp 83-84.) She described a

history of mental illness and drug issues, stating she had been hospitalized over a dozen times. (Id., pp 102-05.)

Based on the evidence and despite argument that there was no evidence linking Mr. Furline to the crimes besides him being merely present, Mr. Furline was bound over as charged. (Transcript, "Preliminary Examination-- Volume 2," pp 9-14, 1/12/16.)

The finding of the district judge was as follow:

First, the Court at this level of the proceedings is not going to make credibility issues but I am going to say that Miss Walker ah, does establish through her testimony a certain pattern of conduct by explaining the Flint Township Home Depot fire, her involvement in it, the involvement of the two defendants and other prior ah, theft related incidences that she was involved with, with respect to her and Mr. ah, Jenkins.

Um, she also testified concerning Mr. Jenkins invitation to her to participate in the Saginaw ah, Home Depot ah, heist.

So the prosecution clearly does establish count one, the criminal enterprise, which is a pattern of conduct which included Saginaw, the Flint Township Home Depot and perhaps some other incidences that she eluded to.

So I am going to find that the prosecution met its burden of proof with respect to conducting a criminal enterprise ah, count one.

Um, when we get to the arson, um, Mr. Tyson, make sure it was Mr. Tyson or was it Mr. Yeah, Mr. Tyson um, testifies how his desk is positioned in doors and windows between aisle thirteen and fourteen and how Mr. Furline walked from around, I guess one of those aisles and told him that ah, they had a fire. And then he didn't see him again.

And then the fire investigator who testified that the fire was in fact intentionally set in aisle thirteen and bay twenty. So, putting Mr. ah, Jenkins at the site where the fire started, given the fact that he alerted the store there was a fire, and given the testimony of Miss Walker that it was the fire that was used in the Flint Township store to

distract people to get the merchandise out. I think they got enough there to get past this stage of proceedings with respect to the arson, since the arson was part of the overall game plan for committing the theft.

So I am going to bind over on count two and three also.

The only thing left is the retail fraud first degree and there is a question of whether movement of the goods within the store is enough. Generally in retail fraud it's been that they have to get that merchandise or attempt to get it at least past the last point of sales. And while it was positioned in this case to be taken out of the store I am not sure that that is enough to get us to retail fraud first degree.

But ah, you've got your count one, which is the twenty year; the count two, which is the ten; the count three, which is the ten; retail fraud is only a five year felony.

Um, and given the total set of facts in this case um, and the way that the merchandise was positioned even though it was still in the store, positioned to be rushed through the door the moment the distraction of the fire allowed it, ah, while the matter is not clear from doubt I am going to bind them over on count four and five also.

(Id., pp 12-14.)

Pre-Trial Hearings

A motion for separate trials was filed on behalf of Mr. Furline.

(“Motion For Separate Trial From Co-Defendant: Alvin Bernard Jenkins, Sr.,” 4/14/16; Transcript, “Hearing,” 5/5/16; “Hearing,” p 6, 6/27/16.)

Furline argues for separate trials, reasoning that Jenkins was interviewed by the police where he told the interrogators that:

- a. FURLINE told him [Jenkins] that he (Furline) was gonna set a fire (at the Home Depot in Saginaw);
- b. FURLINE said “I gotta go down here and set a fire”;
- c. that when JENKINS protested that he didn’t want to be involved, FURLINE said to him “. . . don’t worry about it, just push the

cart out. . . ;” and further, JENKINS stated that FURLINE said, “. . . roll this up front because I’m fixin’ to start a fire.”

d. that after they exited the Home Depot and were in the car, FURLINE stated, “. . . when you start a fire you get commotion in the place.” Further, FURLINE then said **he started the fire.**

(“Motion For Separate Trial From Co-Defendant: Alvin Bernard Jenkins, Sr.,” 4/14/16.)

In the motion, Furline reported Jenkins’ account of the crime was false; that Jenkins acted alone; but that Jenkins intends to blame Furline for planning the crimes. (Id.) Therefore, Furline argues, separate jury trials was needed to avoid prejudice because the two defendants had antagonistic and mutually exclusive defenses. (Id.) Furline signed an affidavit verifying the facts within the motion and signed a second, more specific affidavit, saying Jenkins is lying about Furline’s involvement. (Id.; Amended Affidavit, 5/5/16.)

The motion for separate trials was denied, with the court saying: “The Court having fully considered the matter does not find that a joint trial in this case would prejudicially pit one defendant against the other. At best defendants have merely demonstrated antagonistic claims as to who was responsible for setting the fire.” (“Opinion And Order Of The Court,” 6/2/16.) Certainly an oversimplification since Furline’s theory of the case was that Jenkins acted alone not only in setting the fire but in the heist of the

property. (“Motion For Separate Trial From Co-Defendant: Alvin Bernard Jenkins, Sr.,” 4/14/16.)

Prior to the start of trial, Mr. Furline rejected an offer that would have capped his minimum sentence at 10 years. (Transcript, “Trial-- Volume I Of V,” pp 4-5, 9/13/16.)

Jury Trial

Trial commenced on September 13, 2016 with jury selection of only one jury in this two-defendant case. (Id.) Thereafter, preliminary remarks and opening statements were provided to the jury. (Id., pp 108-32; “Trial-- Volume II Of V,” pp 6-28, 9/14/16.) It was apparent, at the very beginning, that the two defendants had antagonistic defenses. (Id., pp 23-27.)

The prosecution’s remarks during opening statements is a clear indication that he is linking the two defendants together in a scheme to commit the offenses, saying “[t]his is a simple conspiracy of thieves, stealing items and returning them for store credit and selling that store credit for cash. . . . When this case is over, and all the evidence is before you, I’m going to ask that you come back and hold them accountable with a verdict of guilty on both defendants for all the counts they are charged with.” (Id., pp 8-15.) Furline’s counsel says: “If my client is guilty of anything he didn’t ask enough questions when a friend, Mr. Jenkins, asked him to return a table

saw at a different store without a receipt for a refund,” indicating Jenkins stole the item. (Id., p 24.) Jenkins attorney, during opening, disassociates himself from Furline, saying “Mr. Jenkins denies going to the Flint store. . . . Some things that Mr. White said were inaccurate.” (Id., p 26.)

The evidence presented at the trial indicated a fire and theft from a Flint Home Depot and a fire the next day at a Saginaw Home Depot. (Id., pp 32-36.) The evidence showed that Mr. Furline was within the Saginaw Home Depot with Co-Defendant Jenkins; Mr. Furline had requested assistance for a power washer; “a matter of seconds” after an employee speaks with Furline, the employee is alerted of a fire within the store; Mr. Furline **and another customer** altered an employee of the fire; and the store was evacuated, but **no items** were stolen from the Saginaw store. (Id., pp 42-45, 57-61, 68-69, 80-82, 98, 111, and 165-66.) Additional information received were refunds provided to Mr. Furline at a Lowe’s store of two faucets after a theft by Jenkins and a refund at a Home Depot 20 minutes after the Flint incident. (Id., pp 135-40; “Trial-- Volume III Of V,” pp 61-65, 9/15/16.) Although there were multiple cameras in the stores, there were **no videos of Mr. Furline starting the fires and no videos of him stealing anything**. (Id., pp 39-42 and 81-82; “Trial-- Volume IV Of V,” pp 157-58, 9/16/16.)

The Flint fire was determined to be started by an intentional act and a white, female shopper alerted a Home Depot employee. (Transcript, “Trial-- Volume IV Of V,” pp 15-16, 19 and 27-29, 9/16/16.) At the Saginaw Home Depot, it was reported that **a white male customer alerted an employee of the fire.** (Id., p 47.)

Doris Furline-Walker, Mr. Furline’s mother, admitted to stealing an item from the Flint Home Depot and trying to sell it—the item was placed on the cart by Co-Defendant Jenkins. (Id., pp 57-59 and 66.) She mentioned that a gift card was received for the item; that Co-Defendant Jenkins sold the gift card; and that the proceeds from the gift card were split between her and Mr. Jenkins, although Ms. Furline-Walker said she gave some money to Mr. Furline. (Id., pp 60-63.) She was unaware of Mr. Furline trying to return any of the stolen items. (Id., pp 77-78.) Ms. Furline-Walker said she left the Flint Home Depot with Mr. Furline and Mr. Jenkins. (Id., p 62.)

Although Ms. Furline-Walker did not attend the Saginaw Home Depot, it was revealed that **Jenkins reported** to her that “**he didn’t mean to set that fire like that.**” (Id., pp 62-63.) She indicated **Mr. Furline did not know about the plan between her and Jenkins, saying he was just along for the ride and was at the “[w]rong place at the wrong time.”** (Id., p 85.)

Ms. Furline-Walker confirmed that Mr. Furline “didn’t have nothing to do with that” theft. (Id.)

The parties rested. (Transcript, “Trial-- Volume IV Of V,” p 168, 9/16/16.) Thereafter, the parties gave their respective closing arguments. (Transcript, “Trial-- Volume V Of V,” pp 5-40, 9/20/16.) During the closing from Co-Defendant Jenkins, he pointed the finger at Mr. Furline and disavowed any association with the thefts or the fires. (Id., pp 33-36.)

The court instructed the jury, and the jury deliberated. (Id., pp 40-65.) Both Mr. Furline and Jenkins were found guilty as charged. (Id., pp 68-69.)

Sentencing And Post-Conviction Proceedings

On November 3, 2016, Mr. Furline's sentencing hearing was held. (Transcript, “Sentence,” 11/3/16.) The sentencing guideline range was scored as being 99 months to 320 months. (Id., p 3.) The court sentenced Mr. Furline at the very top of the sentencing guideline range with a sentence of 320 months to 50 years. (Id., p 6.)

In an appeal to the Michigan Court of Appeals, Mr. Furline argues, in part, that the convictions should be reversed because having one jury determine the fate of two defendants who had antagonistic and irreconcilable defenses denied his right to a fair trial. (“Defendant-Appellant’s Brief On Appeal,” 9/21/17.) The Court of Appeals agreed, vacating the convictions

and sentences, and remanding the case for a new trial. (Court of Appeals' Opinion, Slip Op pp 5-8, 7/3/18.)

Michigan Court of Appeals' Opinion

The Court of Appeals found the lack of separate juries denied Furline a fair trial since there was a showing in the trial court that separate juries was needed. The Court determined "based on discovery [Furline's counsel] received of Jenkins's recorded interview statements to detectives that disavowed involvement in the Saginaw Home Depot theft and fire, and blamed both events on Furline. Furline's counsel contended that Furline's theory of the case was that Jenkins acted alone in committing the arson and retail fraud." Id. The Court of Appeals further found that the trial court "was fully apprised of the specifics of the codefendants' mutually exclusive defenses and the potential prejudice from one defendant being pitted against another in order to prove each's innocence." Further, in support of its decision, the Court reasons:

. . . The mutual exclusivity of the codefendants' positions was admitted at trial beyond counsels' opening and closing arguments with each codefendant having to prove the other's culpability through each witness's testimony. Walker in particular testified that Furline was not involved in the Flint Home Depot incident, that Jenkins told her he set the fire there, that Furline had only known Jenkins for about a week, and that Jenkins wanted to repeat the Flint arson and retail fraud the next day at the Saginaw store. Without Furline having to testify himself, his mother's testimony was evidence that promoted his defense that it was Jenkins idea to

commit arsons and thefts at home improvement stores and he had nothing to do with Jenkins' plan. Jenkins did not have a similar witness in his corner, but did cross-examine Walker and point out Furline's participation in the crimes through Joy Royal's testimony that Furline signed for a no receipt return at the Burton Lowe's.

. . . In the instant case, each defendant denied involvement in all incidents that occurred at the Saginaw store and completely blamed the other for what transpired. Further, they were not afforded any type of severance. Given that plaintiff's theory was one of aiding and abetting blaming both codefendants, and each codefendant attempted to introduce evidence blaming the other, the jury question turned from not whether the individual codefendants acted in concert to commit the crimes alleged, but which of the two was guilty. That dilemma is not presented to dual juries. . . . At the least, these codefendants should have been granted separate juries to evaluate the evidence against each defendant. The court's decision to predicate the possibility of prejudice on the defendants' right to testify did not protect either defendant from the latent prejudice that would arise as each defendant pursued his mutually exclusive defense at trial. Accordingly, Furline and Jenkins should be afforded new trials, this time with some device of severance.

Id. (Quotation marks omitted.)

The Prosecution's Application For Leave

The prosecution attempts to downplay the significance of the two defendants and their respective defenses. With regard to the affidavit filed by Furline, the prosecution says "Furline claimed only that Jenkins pointed the finger at him for starting the fire; nowhere in the motion, hearing transcript, or affidavit does Furline disavow his participation in the theft." ("Plaintiff-Appellant's Application For Leave To Appeal," 8/22/18.) It must be remembered, Furline was not part of the Flint incident and nothing was

taken from the Saginaw Home Depot. (Transcript, Trial-- Volume II Of V,” pp 42-45, 57-61, 69, 80-82, 98, 111, and 165-66, 9/14/16; “Trial-- Volume IV Of V,” p 85, 9/16/16.)

Further, the prosecution attached little importance on how each defendant handled their respective cross-examination, which was aimed at disavowing any involvement and alluding to the other defendant being responsible, consistent with their respective opening and closing arguments.

Also, the prosecution says there was “no signification indication” of prejudice and that separate trials would have been “unnecessarily duplicative and excessive,” overlooking the fact the separate juries would have resolved this by being judicially economical and protecting the defendants at the same time. (“Plaintiff-Appellant’s Application For Leave To Appeal,” 8/22/18.)

ARGUMENT

I. The court must sever the trial of defendants on related offenses on a showing that severance is necessary to avoid prejudice to substantial rights of the defendant. Mr. Furline was denied a fair trial by the trial court's denial of a motion for separate trials when there was a showing of prejudice and when one jury determined the fate of the defendants with antagonistic and irreconcilable theories.

Defendant-Appellee Terrance Anthony Furline was denied the right to a fair trial when being jointly tried with Co-Defendant Alvin Jenkins with one jury. It was clear that the two defendants had antagonistic and irreconcilable defenses. Mr. Furline's theory was he had no involvement in the offenses—that it was the product and plan of Jenkins and Doris Furline-Walker. (Transcript, "Hearing," 5/5/16; "Hearing," p 6, 6/27/16; "Opinion And Order Of The Court," 6/2/16.) The trial court denied the motion for separate trials. (Id.)

A reviewing court analyzes a trial court's ruling on a motion for separate trials for an abuse of discretion. See People v Hana, 447 Mich 325, 331 (1994).

Mr. Furline was deprived of a fair trial by the use of a single jury in this case. He should be entitled to a new trial due to the antagonistic and irreconcilable defenses. Mr. Furline faced at least two prosecutors, i.e. the People and Co-Defendant's counsel. While the prosecutor attempted to

show Mr. Furline's involvement, it was inescapably linked with Jenkins. Jenkins, however, claimed his own non-involvement. During the closing of Co-Defendant Jenkins, he pointed the finger at Mr. Furline and disavowed any association with the thefts or the fires. (Transcript, "Trial-- Volume V Of V," pp 33-36, 9/20/16.)

With each defendant claiming non-involvement when an offense clearly occurred, separate trials was a necessity. The defenses were antagonistic and irreconcilable and separate trials should have been ordered to protect Mr. Furline's right to fairness in the proceedings.

The decisions to sever or join defendants or to grant separate juries generally lies within the discretion of the trial court. MCL 768.5; MCR 6.121(D); People v Hana, 447 Mich 325 (1994). The question of joinder and severance of defendants in criminal prosecutions in Michigan is addressed by statute and court rule. The statute, MCL 768.5; MSA 28.1028, provides that "[w]hen two or more defendants shall be jointly indicted for any criminal offense, they shall be tried separately or jointly, in the discretion of the court."

The court rule, MCR 6.121, states in relevant part:

(C) Right of Severance; Related Offenses. **On a defendant's motion, the court must sever the trial of defendants on related**

offenses on a showing that severance is necessary to avoid prejudice to substantial rights of the defendant.

(D) Discretionary Severance. On the motion of any party, the court may sever the trial of defendants **on the ground that severance is appropriate to promote fairness to the parties and a fair determination of the guilt or innocence of one or more of the defendants.** Relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of defendants or the complexity or nature of the evidence, the convenience of witnesses, and the parties' readiness for trial.

(Emphasis added.)

Under this court rule, severance was mandated. The defendants were charged (and eventually convicted) with the same offenses. The offenses arise out of two incidents—one at a Flint Home Depot and one at a Saginaw Home Depot. Claims were made throughout from Co-Defendant Jenkins that disavowed his involvement—leading the jury to look to Mr. Furline. This fell right into the hands of the prosecution since it was readily apparent that Jenkins was involved—he just wasn't going to go down alone. It was an abuse of discretion to have one jury decide the fate of Mr. Furline. In essence, the trial court determined judicial economy is more important than Mr. Furline's right to a fair trial.

The most commonly cited reason for severance, as in the present case, is mutually exclusive or irreconcilable antagonistic defenses. Hana,

supra at 348-349. Further, outright severance may not be necessary where the use of separate juries can alleviate the prejudice. Id. at 351-352. In the present case, neither option was used.

The prosecution in its brief completely overlooks the fact that separate juries would have alleviated its concern of two trials being “unnecessarily duplicative and excessive”—there would have been only one presentation of evidence while fairness would have been promoted since the fate of one would not have been intricately linked with the other. While Co-Defendant Alvin Bernard Jenkins and his counsel may not like to hear this, Jenkins was guilty—the testimony and facts show it. Furline, however, is involved in the Saginaw offense by doing something another customer had done-- alerting Home Depot personnel of a fire. (Transcript, “Trial-- Volume II Of V,” pp 42-45, 57-61, 69, 80-82, 98, 111, and 165-66, 9/14/16.)

Under the totality of these circumstances, Mr. Furline was plainly deprived of a fair trial by the use of a single jury here. A jury instruction was insufficient to remedy the fair trial/due process violation. Mr. Furline and Co-Defendant Jenkins’ positions were antagonistic and irreconcilable as they both indicated they were not involved in the offenses and with Jenkins

pointing the finger at Mr. Furline, but with Jenkins certainly involved as shown through testimony.

The clear testimony from a Saginaw Home Depot store employee was that Jenkins “wanted that cart of merchandise” that he had taken near the exit and was prevented from taking the merchandise by the store employee. (Transcript, “Trial—Volume II Of V,” p 111, 9/14/16.) Corroboration of this evidence was made throughout the trial, with evidence being admitted that Jenkins was the person involved in both the Flint and Saginaw Home Depot offenses; that he arranged for the return for stolen items in exchange for a gift card that he sold for cash after the Flint heist; and that he planned, participated in, and admitted to the Saginaw offense. (Transcript, “Trial-- Volume IV Of V,” pp 61-63, 66, and 84-86, 88, and 135, 9/16/16.)

Jenkins doggedly tries to place the blame on Furline, insinuating a plan between Furline and his mother and that Furline’s mother’s testimony against Jenkins was in exchange for her not going to jail. (*Id.*, pp 68 and 74-76.) The prosecutor inextricably connects Furline and Jenkins saying they are involved in a criminal enterprise and conspiracy while both Furline and Jenkins deny their own involvement, guiding the jurors toward the other. (Transcript, “Trial-- Volume V Of V,” pp 16-18, 9/20/16.)

The prosecution mentions:

. . . the defendants took that cart full of goods we saw. . . . They moved the cart full of goods throughout the Home Depot. . . . The defendants intended to steal that cart full of goods. . . . Now, we don't have any evidence of them talking and saying specifically what they were going to do. However, their actions are what proved this. . . . The defendants took a shoplifting and they increased the danger by adding fire to it as a diversion. And they did so in order to commit the theft. Here we see the Saginaw store filling with smoke. And the reason this is criminal enterprise is they took this third degree arson idea and took it on the road and did it more than once. And the danger that this created is why it's criminal enterprise.

(Id.)

Jenkins denies involvement. His counsel denies Jenkins is on the video provided to the jury, saying: "The one thing that is shown in the video that strikes me is it's not Mr. Jenkins on – that is seen getting the cart ready, it is Mr. Furline, obviously with the help of the store employee, getting that table saw ready." (Id., p 33.) (Emphasis added.) This testimony was in stark contrast to testimony at the trial that it was Jenkins, no ifs, ands, or buts. (Transcript, "Trial—Volume II Of V," p 111, 9/14/16.) Further, counsel for Jenkins mentions this was a scheme hatched by Furline: "And who does the return at the Burton store? It is not Mr. Jenkins. It is Mr. Furline. . . . You have to find beyond a reasonable doubt that Mr. Jenkins had some association in this criminal enterprise. I submit to you that he did not. He did not because he wasn't involved in taking the stuff from the Flint store.

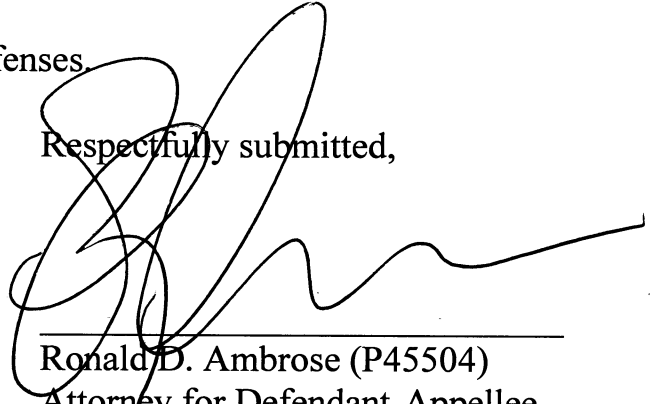
He wasn't involved in returning the stuff to the Burton store.” (Id., pp 35-36.)

Counsel for Furline attempts to tap-dance around the issue, but eventually unequivocally says the jury has to judge the two defendants separately and that it was Doris Furline-Walker and Jenkins who were the co-conspirators. (Id., pp 25, 27, and 30.) With these types of irreconcilable defenses, it was an error to hold one jury for this case. Separate juries was necessary to avoid prejudice to substantial rights of Mr. Furline. Therefore, this Court should uphold remand for a new trial.

CONCLUSION

Defendant-Appellee Terrance Anthony Furline asks the Court to affirm the decision of the Michigan Court of Appeals, vacating the convictions and sentences and remanding for a new trial. The trial court erred when failing to provide separate trials and/or separate juries when the two defendants had antagonistic defenses.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'R. Ambrose', is written over the signature line and extends to the right.

Dated: September 10, 2018

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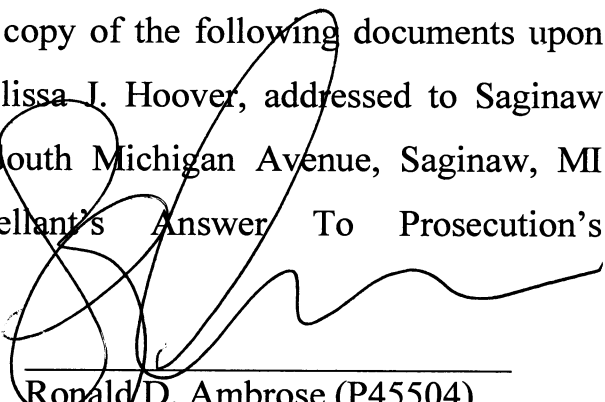
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PROOF OF SERVICE

I, Ronald D. Ambrose, attorney for Defendant-Appellee Terrance Anthony Furline, certify that on September 13, 2018 I served through first class mail, postage fully prepaid, a copy of the following documents upon counsel for Plaintiff-Appellant, Melissa J. Hoover, addressed to Saginaw County Prosecutor's Office, 111 South Michigan Avenue, Saginaw, MI 48602-2019: 1) Defendant-Appellant's Answer To Prosecution's Application For Leave To Appeal.

Dated: September 13, 2018



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